THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.28131 of 2005

24.1.2006

Between:

T.Raghavender, S/o.Pundareekam

… Petitioner

AND

The Mandal Revenue Officer, Yalal Mandal,

Ranga Reddy District.

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.28131 of 2005

ORDER:

The petitioner is resident of Yalal village and Mandal in Ranga Reddy District. He invoked the jurisdiction of this Court under Article 226 of Constitution of India praying for writ of Mandamus declaring the action of the respondent, namely, Mandal Revenue Officer, Yalal (MRO) in evicting the petitioner from the rice mill M/s.Sri Lakshmi Venkataramana Industries, Kokat village in Yalal Mandal without due

process of law as arbitrary, illegal and violative of fundamental rights of the petitioners.

The case of the petitioner in brief is as follows. The petitioner purchased rice mill known as M/s.Tirumala Industries with open yard and platform constructed on Acs.0.20 gts., of land in survey No.57 of Kokat village from Smt.Konda Suvarna under registered sale deed dated 16.6.2005. The petitioner got it mutated in assessment records of gram panchayat and renamed it as M/s.Sri Lakshmi Venkataramana Industries (hereafter called, rice mill). He allegedly paid the necessary taxes to gram panchayat and also obtained licence from the Directorate of Industries. The petitioner alleges that his vendor purchased the property in question from one Sivamma under registered sale deed dated 13.2.2002, obtained permission dated 22.2.2002 from gram panchayat for construction of a rice mill and also obtained licence from the Directorate of Industries for commencing M/s.Tirumala Industries. It is alleged that the respondent issued a notice to one Saibaba under A.P.Land Encroachment Act, 1905 (the Act, for brevity) alleging that the rice mill is situated in survey No.52 and that Saibaba encroached upon the land where rice mill was constructed. On 14.11.2005, the respondent passed eviction orders directing Saibaba to vacate the government land to an extent of Acs.0.08 gts., in survey No.52. Under the guise of the said order, the respondent resorted for eviction of the rice mill and seized and locked the premises, though there are 1600 bags of paddy belonging to various farmers. Be it noted, the petitioner filed a writ petition being W.P.No.26754 of 2005, which was dismissed by this Court by order-dated 15.12.2005. Aggrieved by the same, the petitioner preferred an appeal being W.A.No.2543 of 2005. The Division Bench of this Court permitted the petitioner to withdraw the writ appeal and writ petition with liberty to file fresh writ petition on the same cause. Therefore, the petitioner filed the present writ petition.

The learned Senior Counsel for the petitioner, Sri K.Ramakrishna Reddy, submits that the petitioner is owner and in occupation of the property and therefore, without there being any proceedings against the petitioner or his vendor, the respondent cannot evict the petitioner. He further contends that the petitioner purchased property from Smt.Konda Suvarna, who has a valid title, that after purchasing the rice mill the petitioner made improvements and therefore the respondent cannot resort to the provisions of the Act for evicting the petitioner especially when the petitioner has absolute title and possessory rights over the land. The learned Senior Counsel while criticising the impugned action as arbitrary and without jurisdiction, placed strong reliance on the decisions of the Supreme Court in **Govt. of A.P. v T.Krishna Rao** and **State of Rajasthan v Padmavathi Devi** and the decisions of this Court in **Meharunnissa Begum v State of A.P.** and **Special Deputy Collector v K.L.Bapuji**. **Per contra**, the learned Assistant Government Pleader for Revenue (General) submits that MRO initiated proceedings under the Act and issued notice to Saibaba, the husband of the petitioner's vendor on 07.3.2005, who submitted explanation through his lawyer on 28.5.2005, that the same was considered and that after verifying the registered sale deed produced by Saibaba as well as the report of the surveyor, the MRO came to the conclusion that the petitioner's vendor and her husband encroached part of the government land in survey No.52, the total extent of

which is Acs.485.35 gts. The learned Assistant Government Pleader points out that the petitioner purchased the property under registered sale deed dated 16.5.2005 and by the time the action was initiated under the Act, the petitioner was not in possession of the land and therefore, there was no necessity to issue notice to the petitioner.

A copy of the proceedings No.B/677/2005 dated 14.11.2005 issued by the respondent herein is filed along with the writ petition. The same would reveal that the Mandal surveyor surveyed the land in survey No.52 situated at Kokat village and reported that one Konda Saibaba encroached an extent of Acs.0.08 gts., in survey No.52/5/B and constructed a rice mill. On verification, it was found that the land in survey No.52 admeasuring Acs.456.12 gts., is a Giran (Government) land and therefore, a show cause notice dated 07.3.2005 was issued under Section 7 of the Act. Konda Saibaba engaged an Advocate on his behalf and submitted explanation on 28.5.2005. In his explanation, he stated that he and his wife, Smt.Konda Suvarna, purchased an extent of Acs.1.00 and another extent of Acs.0.20 gts. In survey No.57 of Kokat village under a registered sale deed from pattadar Sivamma and that the land belonging to his wife admeasuring Acs.0.20 gts. is located towards survey No.52 assigned to one Ningappa. He further stated that he and his wife constructed rice mill on the land admeasuring Acs.0.20 gts., and also constructed drying land, parking yard, labour quarters and steam plant in the land admeasuring Acs.1.00 purchased by him. He also alleged that the Village Secretary shown the boundaries of the land purchased by him in survey No.57 and that they have not encroached upon the government land. The MRO considered this explanation and after verifying the sale deeds bearing No.452/2002 and 454/2002 under which Saibaba and his wife Smt.Konda Suvarna purchaser property came to the conclusion that they encroached into government land to an extent of Acs.0.08 gts in survey No.52. It appears, Saibaba also requested the MRO to regularise the possession on market value and therefore the MRO informed him that the question of regularisation of possession on market value does not arise. Saibaba was therefore ordered to evict the land admeasuring Acs.0.08 gts in survey No.52.

When the action was initiated by the respondent, M/s.Tirumala Industries represented by Konda Saibaba and his wife, Smt.Konda Suvarna, the petitioner, who purchased the property on 16.6.2005 was nowhere in the picture. Indeed, when the matter was pending before the respondent, Smt.Konda Suvarna sold an extent of Acs.0.20 gts in survey No.57 of Kokat village to the petitioner. Interestingly, the husband of the petitioner's vendor did not sell Acs.1.00 of land, which he purchased under different sale deeds. This shows that Saibaba and Suvarna were very much aware that there is a doubt about the land admeasuring Acs.0.20 gts purchased by Suvarna. Be that as it is, when action is initiated against the vendor of the petitioner by issuing a notice, the petitioner, who purchased the property pending the proceedings before the respondent, as an aggrieved person, can as well move the appellate authority under Section 10 of the Act raising all the grounds. This becomes more a necessity especially when the respondent got the land surveyed by the Municipal surveyor before coming to the conclusion that Acs.0.08 gts of land which was purchased by the petitioner is encroachment of government land in survey

No.52 of Kokat village.

The submission that whenever there is a dispute of title in respect of the government land and whenever a person is in longstanding possession, the government should seek remedy in a common law Court by filing a suit for declaration cannot be accepted. There is no such inflexible rule laid down by the Supreme Court or this Court in the decisions cited by the learned Senior Counsel for the petitioner. This Court in **Raidurg Co-op. House Building Society Ltd. V Govt. of A.P.** and **R.Jayasimha Reddy v Government of A.P.** referred to the decisions in **Govt. of A.P. v T.Krishna Rao** (supra), **Shivalingappa v State of A.P.** and **Special Deputy Collector v K.L.Bapuji** (supra). In **Raidurg Co-op. House Building Society Ltd. V Govt. of A.P.** (supra), it was laid down as under.

> A learned Single Judge of this Court in **Shivalingappa v State of A.P.** (supra), considered the decisions of the Supreme Court in **Govt. of A.P. v T.Krishna Rao** (supra) and another decision of this Court in **Special Deputy Collector v K.L.Bapuji** (supra) and observed that these two decisions do not lay down any general law that whenever the persons sought to be evicted from the land claim their possession to be not unauthorised, the Government should be compelled to go to a Civil Court. It was also observed that when there is evidence that Government is in possession of the land, the Court must not conclude that the petitioner raised a *bona fide* claim about the possession.

Yet, again, it was held as under.

> As rightly contended by the learned Advocate General, the State has an option to avail any of the remedies available under law including the Land Encroachment Act. When the land was surveyed as Government poramboke land and Revenue records show as such, the petitioners cannot allege long standing occupation when pattas given to *Chandni Begum* and *Sonabai* are not genuine and incorrect. Merely placing reliance on some communications among various officials, it cannot be said that there is a *bona fide* and genuine dispute of title. In a given case even if there is evidence of showing the possession of a person, it cannot be said that there is *bona fide* dispute. Long standing possession is one of the factors and the same cannot be the only factor to compel the Government to go and avail remedy of civil suit. It must be remembered that by a catena of decisions it is well settled that only entries in the Revenue records do not confer any title. Nonetheless, if revenue survey is conducted as required under law and in accordance with the provisions, *Sethwar* can itself be evidence of title.

The petitioner has already obtained a copy of the proceedings of the MRO and therefore liberty is reserved to him to approach the RDO and file appeal. It shall also be open to the petitioner to obtain appropriate orders for release of the rice mill, which was seized pending consideration of the appeal. Various other questions raised by the petitioner are left open to be decided at an appropriate time.

The writ petition with the above observations is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

.01.2006.

NOTE:

Issue order copy by 25.1.2006.

(By order)

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